

SENATE BILL 919

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9lr2107
CF HB 1200

By: **Senator McFadden (By Request – Baltimore City Administration)**

Introduced and read first time: February 16, 2009

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes – Possession of Loaded Firearm – Enhanced Penalties**

3 FOR the purpose of prohibiting a person from wearing, carrying, or transporting a
4 handgun loaded with ammunition on or about the person or in a vehicle under
5 certain circumstances; prohibiting a person from possessing, owning, or
6 carrying a firearm loaded with ammunition if the person has been convicted of
7 certain crimes; prohibiting a person from possessing a regulated firearm loaded
8 with ammunition under certain circumstances or if the person is under a certain
9 age; establishing certain penalties, including mandatory minimum terms of
10 imprisonment, for violations of this Act; prohibiting a court from suspending
11 any part of a sentence or ordering probation before judgment for certain crimes;
12 providing that each violation of a certain crime is a separate crime; and
13 generally relating to enhanced penalties for possession of a loaded firearm.

14 BY repealing and reenacting, with amendments,
15 Article – Criminal Law
16 Section 4–203(a)(1) and (c) and 5–622
17 Annotated Code of Maryland
18 (2002 Volume and 2008 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Public Safety
21 Section 5–133
22 Annotated Code of Maryland
23 (2003 Volume and 2008 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article – Criminal Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 4-203.

2 (a) (1) Except as provided in subsection (b) of this section, a person may
3 not:

4 (i) wear, carry, or transport a handgun, whether concealed or
5 open, on or about the person;

6 (ii) wear, carry, or knowingly transport a handgun, whether
7 concealed or open, in a vehicle traveling on a road or parking lot generally used by the
8 public, highway, waterway, or airway of the State;

9 (iii) violate item (i) or (ii) of this paragraph while on public
10 school property in the State; [or]

11 (iv) violate item (i) or (ii) of this paragraph with the deliberate
12 purpose of injuring or killing another person; **OR**

13 **(V) VIOLATE ITEM (I) OR (II) OF THIS PARAGRAPH WITH A**
14 **HANDGUN LOADED WITH AMMUNITION.**

15 (c) (1) **(I) [A] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF**
16 **THIS PARAGRAPH, A person who violates this section is guilty of a misdemeanor and**
17 **on conviction is subject to the penalties provided in [this subsection] PARAGRAPH (2)**
18 **OF THIS SUBSECTION.**

19 **(II) 1. A PERSON WHO VIOLATES SUBSECTION (A)(1)(V)**
20 **OF THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO**
21 **IMPRISONMENT FOR A MANDATORY MINIMUM TERM OF 18 MONTHS AND NOT**
22 **EXCEEDING 10 YEARS.**

23 **2. THE COURT MAY NOT IMPOSE LESS THAN THE**
24 **MINIMUM SENTENCE REQUIRED BY SUBSUBPARAGRAPH 1 OF THIS**
25 **SUBPARAGRAPH.**

26 (2) If the person has not previously been convicted under this section,
27 § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title:

28 (i) except as provided in item (ii) of this paragraph, the person
29 is subject to imprisonment for not less than 30 days and not exceeding 3 years or a fine
30 of not less than \$250 and not exceeding \$2,500 or both; or

31 (ii) if the person violates subsection (a)(1)(iii) of this section, the
32 person shall be sentenced to imprisonment for not less than 90 days.

1 (3) (i) If the person has previously been convicted once under this
2 section, § 4–204 of this subtitle, or § 4–101 or § 4–102 of this title:

3 1. except as provided in item 2 of this subparagraph, the
4 person is subject to imprisonment for not less than 1 year and not exceeding 10 years;
5 or

6 2. if the person violates subsection (a)(1)(iii) of this
7 section, the person is subject to imprisonment for not less than 3 years and not
8 exceeding 10 years.

9 (ii) The court may not impose less than the applicable minimum
10 sentence provided under subparagraph (i) of this paragraph.

11 (4) (i) If the person has previously been convicted more than once
12 under this section, § 4–204 of this subtitle, or § 4–101 or § 4–102 of this title, or of any
13 combination of these crimes:

14 1. except as provided in item (2) of this subparagraph,
15 the person is subject to imprisonment for not less than 3 years and not exceeding 10
16 years; or

17 2. A. if the person violates subsection (a)(1)(iii) of this
18 section, the person is subject to imprisonment for not less than 5 years and not
19 exceeding 10 years; or

20 B. if the person violates subsection (a)(1)(iv) of this
21 section, the person is subject to imprisonment for not less than 5 years and not
22 exceeding 10 years.

23 (ii) The court may not impose less than the applicable minimum
24 sentence provided under subparagraph (i) of this paragraph.

25 5–622.

26 (a) In this section, “firearm” includes:

27 (1) a handgun, antique firearm, rifle, shotgun, short-barreled
28 shotgun, and short-barreled rifle, as those words are defined in § 4–201 of this article;

29 (2) a machine gun, as defined in § 4–401 of this article; and

30 (3) a regulated firearm, as defined in § 5–101 of the Public Safety
31 Article.

32 (b) A person may not possess, own, carry, or transport a firearm if that
33 person has been convicted of:

1 (1) a felony under this title;

2 (2) a crime under the laws of another state or of the United States
3 that would be a felony under this title if committed in this State;

4 (3) conspiracy to commit a crime referred to in paragraphs (1) and (2)
5 of this subsection; or

6 (4) an attempt to commit a crime referred to in paragraphs (1) and (2)
7 of this subsection.

8 **(C) A PERSON MAY NOT VIOLATE SUBSECTION (B) OF THIS SECTION**
9 **WITH A FIREARM LOADED WITH AMMUNITION.**

10 [(c)] **(D)** A person who violates **SUBSECTION (B) OF** this section is guilty of
11 a felony and on conviction is subject to imprisonment not exceeding 5 years or a fine
12 not exceeding \$10,000 or both.

13 **(E) (1) A PERSON WHO VIOLATES SUBSECTION (C) OF THIS SECTION**
14 **IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT**
15 **FOR A MANDATORY MINIMUM TERM OF 18 MONTHS AND NOT EXCEEDING 10**
16 **YEARS.**

17 **(2) THE COURT MAY NOT:**

18 **(I) IMPOSE LESS THAN THE MINIMUM SENTENCE REQUIRED**
19 **BY PARAGRAPH (1) OF THIS SUBSECTION;**

20 **(II) SUSPEND ANY PART OF THE MANDATORY MINIMUM**
21 **SENTENCE REQUIRED BY PARAGRAPH (1) OF THIS SUBSECTION; OR**

22 **(III) ORDER PROBATION BEFORE JUDGMENT IN A CASE**
23 **ARISING UNDER SUBSECTION (C) OF THIS SECTION.**

24 **Article – Public Safety**

25 5–133.

26 (a) This section supersedes any restriction that a local jurisdiction in the
27 State imposes on the possession by a private party of a regulated firearm, and the
28 State preempts the right of any local jurisdiction to regulate the possession of a
29 regulated firearm.

30 (b) A person may not possess a regulated firearm if the person:

31 (1) has been convicted of a disqualifying crime;

1 (2) has been convicted of a violation classified as a common law crime
2 and received a term of imprisonment of more than 2 years;

3 (3) is a fugitive from justice;

4 (4) is a habitual drunkard;

5 (5) is addicted to a controlled dangerous substance or is a habitual
6 user;

7 (6) suffers from a mental disorder as defined in § 10–101(f)(2) of the
8 Health – General Article and has a history of violent behavior against the person or
9 another, unless the person has a physician’s certificate that the person is capable of
10 possessing a regulated firearm without undue danger to the person or to another;

11 (7) has been confined for more than 30 consecutive days to a facility as
12 defined in § 10–101 of the Health – General Article, unless the person has a
13 physician’s certificate that the person is capable of possessing a regulated firearm
14 without undue danger to the person or to another;

15 (8) is a respondent against whom a current non ex parte civil
16 protective order has been entered under § 4–506 of the Family Law Article; or

17 (9) if under the age of 30 years at the time of possession, has been
18 adjudicated delinquent by a juvenile court for an act that would be a disqualifying
19 crime if committed by an adult.

20 (c) (1) A person may not possess a regulated firearm if the person was
21 previously convicted of:

22 (i) a crime of violence; or

23 (ii) a violation of § 5–602, § 5–603, § 5–604, § 5–605, § 5–606, §
24 5–607, § 5–608, § 5–609, § 5–612, § 5–613, or § 5–614 of the Criminal Law Article.

25 (2) A person who violates this subsection is guilty of a felony and on
26 conviction is subject to imprisonment for not less than 5 years, no part of which may
27 be suspended.

28 (3) A person sentenced under paragraph (1) of this subsection may not
29 be eligible for parole.

30 (4) Each violation of this subsection is a separate crime.

31 (d) (1) Except as provided in paragraph (2) of this subsection, a person
32 who is under the age of 21 years may not possess a regulated firearm or ammunition
33 solely designed for a regulated firearm.

1 (2) Unless a person is otherwise prohibited from possessing a
2 regulated firearm, this subsection does not apply to:

3 (i) the temporary transfer or possession of a regulated firearm
4 or ammunition solely designed for a regulated firearm if the person is:

5 1. under the supervision of another who is at least 21
6 years old and who is not prohibited by State or federal law from possessing a firearm;
7 and

8 2. acting with the permission of the parent or legal
9 guardian of the transferee or person in possession;

10 (ii) the transfer by inheritance of title, and not of possession, of
11 a regulated firearm;

12 (iii) a member of the armed forces of the United States or the
13 National Guard while performing official duties;

14 (iv) the temporary transfer or possession of a regulated firearm
15 or ammunition solely designed for a regulated firearm if the person is:

16 1. participating in marksmanship training of a
17 recognized organization; and

18 2. under the supervision of a qualified instructor;

19 (v) a person who is required to possess a regulated firearm for
20 employment and who holds a permit under Subtitle 3 of this title; or

21 (vi) the possession of a firearm or ammunition for self-defense
22 or the defense of others against a trespasser into the residence of the person in
23 possession or into a residence in which the person in possession is an invited guest.

24 **(E) (1) A PERSON MAY NOT VIOLATE SUBSECTION (B) OR (D) OF THIS**
25 **SECTION WITH A REGULATED FIREARM LOADED WITH AMMUNITION.**

26 **(2) A PERSON WHO VIOLATES PARAGRAPH (1) OF THIS**
27 **SUBSECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO**
28 **IMPRISONMENT FOR A MANDATORY MINIMUM SENTENCE OF 18 MONTHS AND**
29 **NOT EXCEEDING 10 YEARS.**

30 **(3) A COURT MAY NOT IMPOSE LESS THAN THE MINIMUM**
31 **SENTENCE REQUIRED BY PARAGRAPH (2) OF THIS SUBSECTION.**

1 **(4) A COURT MAY NOT SUSPEND ANY PART OF THE MANDATORY**
2 **MINIMUM SENTENCE REQUIRED BY PARAGRAPH (2) OF THIS SUBSECTION.**

3 **(5) A COURT MAY NOT ORDER PROBATION BEFORE JUDGMENT IN**
4 **A CASE ARISING UNDER THIS SUBSECTION.**

5 **(6) EACH VIOLATION OF THIS SUBSECTION IS A SEPARATE CRIME.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2009.